Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections of the	)	MM Docket No. 92-266
Cable Television Consumer Protection	)	
and Competition Act of 1992	)	
	)	
Rate Regulation	)	

COMMENTS

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EXECUTIVE SUMMARY

In adopting rules to implement the uniform pricing provisions of Section 623(d), the Commission must make certain that all consumers in a franchise area receive the full benefits of competition, even those that cannot be served by alternative providers or choose not to subscribe to an alternative service. Section 623(d) was adopted in response to predatory "rifle shot" marketing tactics employed by cable when competition is introduced. To implement it properly, the Commission must bar a cable system from discriminating against any consumer that resides in an area not served by an alternative service provider, or that choose not to subscribe to an available alternative.

In determining the presence of effective competition under Section 623(l), the Commission should employ the protected service area definition set forth in Section 21.902(d) of the Commission's Rules as defining the area in which a wireless cable system's service is offered.

The rules governing the collection of information to determine whether alternative service providers serve 15% or more of the marketplace must be narrowly tailored to protect the wireless operator's proprietary subscriber information.

The Commission cannot merely deem alternative video programming distributors in a market to meet "comparable video programming" element of the effective competition test if they have a 15% market share. Congress intended a more searching inquiry, one that necessarily will have to consider the public demand in each market.

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COMMENTS

The Wireless Cable Association International, Inc. ("WCA"),[1] by its attorneys and pursuant to § 1.415 of the Commission's Rules,[2] hereby submits its initial comments in response to the *Notice of Proposed Rule Making* ("NPRM") commencing the captioned proceeding.[3]

I. INTRODUCTION.

In this proceeding, the Commission proposes to amend its rules to implement Sections 623, 612, and 622(c) of the Communications Act of 1934 ("1934 Act"), as recently amended by the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable

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[1]WCA is the principal trade association of the wireless cable industry. Its members include the operators of virtually every wireless cable system in America, the licensees of Multipoint Distribution Service and Instructional Television Fixed Service stations utilized by wireless cable operators to distribute programming to subscribers, program suppliers, and equipment manufacturers.

[2]47 C.F.R. § 1.415 (1992).

[3]*Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992*, MM Docket No. 92-266, FCC 92-544 (rel. Dec. 24, 1992) [hereinafter cited as "*NPRM*"].

Act").[4] The *NPRM* solicits comments on a variety of issues raised by Congress' mandate that the Commission craft a comprehensive regulatory model for the regulation of rates for cable service and for leased commercial access.

Because a wireless cable system is not a "cable system" for purposes of the 1934 Act, the rate regulation rules to be adopted in this proceeding will not be directly applicability to the wireless cable industry.[5] However, the marketplace environment in which wireless cable operators compete will be directly impacted by the Commission's implementation of the uniform pricing requirements of Section 623(d) and by the rules adopted to implement the definition of "effective competition" set forth in Section 623(l). Therefore, WCA will focus its comments on the issues raised by the *NPRM* concerning those provisions.

I. THE COMMISSION SHOULD ADOPT RULES IMPLEMENTING THE UNIFORM PRICING PROVISIONS OF SECTION 623(d) THAT ASSURE CONSUMERS THE FULL BENEFITS OF COMPETITION.

As adopted by the 1992 Cable Act, Section 623(d) of the 1934 Act now requires that "a cable operator shall have a rate structure, for the provision of cable service, that is uniform throughout the geographic area in which cable service is provided over its cable system."[6] In the *NPRM*, the Commission solicits comment on the degree to which this provision restricts cable operators from structuring service categories or otherwise establishing pricing

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[4]Cable Television Consumer Protection and Competition Act, Pub. L. No. 102-385, §§ 3, 9, 14, 106 Stat. 1460 (1992) (hereinafter cited as "1992 Cable Act").

[5]*See Definition of A Cable System*, 5 FCC Rcd 7638, 7639-41 (1990), *reversed on other grounds sub nom., Beach Communications v. FCC*, 965 F.2d 1103 (D.C. Cir. 1992), *cert. granted*, __ U.S.L.W. ____ (U.S. Nov. 30, 1992)(No. 92-603).

[6]47 U.S.C. § 543(d).

structures that are not entirely consistent among all subscribers.[7] This is a critical issue to WCA, for the cable industry has frequently engaged in predatory conduct when confronted with competition.

The record developed before Congress, as well as that created by the Commission in MM Docket Nos. 89-600 and 90-4, demonstrates that when a cable system is faced with competition in a portion, but not all, of its franchise area, the typical response is to initiate "rifle shot" marketing practices which benefit those who reside where competition is present, at the expense of those living where no alternative exists. Time and again, franchised cable operators have responded to competition not by lowering prices or improving service to all subscribers, but by making special offers available only to those with access to competitive services. It is not unusual for franchised cable operators to offer a wireless cable subscriber free installation, several months free or low cost service or, indeed, even a free television set if he or she switches to the franchised system. To cite some examples brought to light in MM Docket Nos. 89-600 and 90-4:

- Telesat Cablevision, Inc. ("Telesat"), a company that has overbuilt several cable systems, reported that "the incumbent waits until Telesat lays cable down a particular block or wires a particular neighborhood and then drastically reduces its price only to those customers, often literally following Telesat salespersons from home-to-home to offer their discounts and give-aways."[8]

- Ultronics, Inc. ("Ultronics"), which has overbuilt the cable systems of Cox Cable Company ("Cox") in Chula Vista and National City, CA, showed that while Cox has matched Ultronics' basic rates in those two communities, Cox has maintained

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[7]*See NPRM, supra* note 3, at ¶111-115.

[8]Comments of Telesat Cablevision, Inc., MM Docket No. 89-600, at 20-21 (filed Mar. 1, 1990).

its basic cable rates more than $6.00 higher in eight other communities served by the same cable headend -- communities which have not been overbuilt.[9]

- Waterville Cable TV reported that in response to competition from an overbuild, the entrenched cable operator in Waterville, KS offered subscribers to the overbuild $200.00 in cash if they would switch to the entrenched operator's service.[10]

- Pacific West Cable Television ("PacWest Cable"), a hybrid wired/wireless cable system, alerted the Commission to a situation where the initial cable franchisee in Sacramento, California "lower[ed] its rates (in some instances, giv[ing] away free service) in areas where it faced potential competition from PacWest, while raising rates in areas where PacWest was not constructing facilities.[11]

Moreover, since the record in these proceedings closed several years ago, virtually every wireless cable operator that competes against a franchised cable system has suffered a similar fate. Rather than respond to competition by lowering rates to all consumers, cable operators have too frequently sought to regain market share by targeting wireless cable subscribers for special benefits not available to the public at large.

Certainly, WCA is not complaining about price reductions by cable systems that legitimately and lawfully respond to competition -- the wireless cable industry is fully prepared to compete with entrenched cable operators head-to-head on the basis of pricing. Indeed, the lower rates offered by wireless cable are already forcing cable operators to cut

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[9]*See* Comments of Ultronics, Inc., MM Docket No. 89-600, at 1 (filed Feb. 26, 1990).

[10]*See* Letter from Kenneth Hula to Hon. Nancy L. Kassenbaum, at 2 (dated Jan. 9, 1990).

[11]Comments of Pacific West Cable Television, MM Docket No. 90-4, at 5 (filed Mar. 26, 1990).

their own prices.[12] However, the Commission must assure that residents of areas lacking access to a competitive service provider are protected from monopoly pricing through rate regulation. That is particularly important now that Congress has mandated that effective competition exists, and that cable rates cannot be regulated, if a competitive service is available to as little as 50% of the homes in a franchise area.[13] Presumably, Congress intended for the uniform pricing requirement of Section 623(d) to serve as a proxy for actual competition so that the benefits of competition can be extended even to those households within a franchise area that cannot actually subscribe to a competitive offering.

Certainly WCA is sensitive to the need of cable operators to adopt *bona fide* service categories. However, to assure the achievement of Congress' goals, the Commission should ban in no uncertain terms any discrimination between customers based directly or indirectly on whether a competitive service is available to, or subscribed by, one. That ban should extend not only to different pricing structures, but also to different installation charges, the availability of free service or equipment, or any other tangible benefits. Simply put, such a policy is the only way the Commission can assure realization of Congress' intent that all consumers within a franchise area enjoy the benefits of competition, even those that cannot subscribe to an alternative provider or choose not to.

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[12]Stump, "Toe to Toe with a Wireless Competitor," *Cable World*, at 28-29 (Oct. 5, 1992; "In the Trenches: Cable vs. Wireless, How Do Cable Operators Fight Back Against Price-cutting Competition?", at 13 (Aug. 24, 1992); Kerver, "Wireless Cable: Friend or Foe," *Cablevision*, at 20-24 (Oct. 5, 1992).

[13]*See* 47 U.S.C. § 543(l)(1)(B).

II. SECTION 623(l) OF THE 1934 ACT, AS AMENDED BY SECTION 3 OF THE 1992 ACT, MUST BE IMPLEMENTED CONSISTENT WITH CONGRESSIONAL INTENT.

Section 3 of the 1992 Cable Act permits regulation of a cable system's subscriber rates only if the Commission finds that the cable system is "not subject to effective competition."[14] The statute establishes three different tests for the Commission to employ to determine if a cable system is subject to effective competition. Under the first test, effective competition must be found if fewer than 30% of the households in the franchise area subscribe to a cable system.[15] Under the second, the Commission is required to find that effective competition exists if the franchise area is "(i) served by at least two unaffiliated multichannel video programming distributors where both offer comparable video programming to at least fifty percent of the households in the franchise area and (ii) the number of households subscribing to programming services offered by multichannel video programming distributors other than the largest multichannel video programming distributor exceeds fifteen percent of the households in the franchise area."[16] Finally, effective competition must be found if the franchising authority in the subject franchise area is itself a multichannel video programming distributor and offers video programming to at least fifty percent of the households in that franchise area.[17] Because wireless cable systems are among the most likely source of

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[14] *NPRM, supra* note 3, at ¶ 6.

[15] 47 U.S.C. § 543(l)(1)(A).

[16] *Id.* at § 543(l)(1)(B).

[17] *Id.* at § 543(1)(1)(C).

effective competition under the second test established by Congress,[18] WCA is vitally concerned with the rules and policies that will be adopted by the Commission implementing that test.

A. The Commission Should Use The Protected Service Area Definition To Determine The Area In Which A Wireless Cable System Offers Service.

In the *NPRM*, the Commission seeks comment on the appropriate standard for gauging which households are "offered" video programming by the multichannel video programming distributor being considered as a potential source of effective competition.[19] In determining which households are offered service by a wireless cable system provider, WCA urges the

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[18]In passing the 1992 Cable Act, Congress explicitly recognized that the wireless cable industry represents one of the most promising sources of competition to the current cable monopoly. *See, e.g.* S. Rep. No. 102-92, 102d Cong., 1st Sess. at 14-15 (1991)[hereinafter cited as "Senate Report"]; H.R. No. 102-628, 102d Cong., 2d Sess., at 44-45 (1992). That should come as no surprise to the Commission. When the Commission first allocated spectrum for wireless cable almost a decade ago, it anticipated that wireless would provide much needed competition to the cable monopoly. *See Amendment of Parts 2, 21, 74 and 94 of the Commission's Rules and Regulations in Regard to Frequency Allocation to the Instructional Television Fixed Service, the Multipoint Distribution Service, and the Private Operational Fixed Microwave Service*, 94 F.C.C.2d 1203, 1228 (1983); *Various Methods of Transmitting Program Material to Hotels and Similar Locations*, 99 F.C.C.2d 715 (1983). Since then, the Commission has frequently acknowledged that wireless cable is today "one of the most promising sources of multichannel competition in the local market." *See, e.g. Competition, Rate Deregulation and the Commission's Policies Relating to the Provision of Cable Television Service*, 5 FCC Rcd 4962, 5014-5016 (1989). *See also, e.g. Amendment of Parts 21, 43, 74, 78, and 94 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands Affecting: Private Operational-Fixed Microwave Service, Multichannel Multipoint Distribution Service, Multichannel Multipoint Distribution Service, Instructional Television Fixed Service, and Cable Television Relay Service*, 5 FCC Rcd 971 (1990); *Amendment of Parts 1, 2, and 21 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands*, 7 FCC Rcd 3266 (1992); *American Television and Communications Corp.*, 4 FCC Rcd 4707 (1989). *See also* "Sikes: Competition's the Key to Changing Video Marketplace," *Cable World*, at 22 (Nov. 13, 1989).

[19]*See NPRM, supra* note 3, at ¶ 8.

Commission to use the protected service area definition contained in Section 21.902(d) of the Commission's Rules.[20] That is precisely how the Commission decided to determine the area served by wireless cable systems under the multichannel competitor portion of its former "effective competition" rules less than a year and a half ago in the *Report and Order and Second Further Notice of Proposed Rulemaking* in MM Docket No. 90-4, and there is no apparent reason to depart from that decision here.[21]

B. The Commission Should Protect The Proprietary Nature Of Wireless Cable Operators' Subscriber Information.

In order to determine whether effective competition to a franchised able systecm exists under Section 628(l)(B), it will be necessary for the appropriate governmental authority to determine whether more than 15% of the homes in the franchise area subscribe to services offered by other multichannel video programming distributors. The *NPRM* solicits public

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[20]47 C.F.R. § 21.902(d).

[21]*See Report and Order and Second Further Notice of Proposed Rule Making*, 6 FCC Rcd 4545, 4553 n. 18 (1991). Although line of sight limitations and deficiencies in the Commission's interference standards make it difficult for a wireless cable operator to serve all of the households within the protected service area of the Multipoint Distribution Service and Instructional Television Fixed Services stations it employs, the Commission's recent authorization of signal repeaters makes it possible for a wireless operator to serve virtually any household within the protected service area. *Amendment of Parts 21, 43, 74, 78, and 94 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands Affecting: Private Operational-Fixed Microwave Service, Multichannel Multipoint Distribution Service, Multichannel Multipoint Distribution Service, Instructional Television Fixed Service, and Cable Television Relay Service*, 5 FCC Rcd 6410, 6422-23 (1990) Although a wireless cable operator can often serve beyond the protected service area boundaries, subscribers in those areas are subject to interference and may lose service as nearby wireless cable systems launch. Therefore, in light of the tentative nature of the service a wireless cable operator offers outside the protected service area, it would be inappropriate to consider such area as being served for purposes of determining whether effective competition exists.

comment on the disclosure requirements that should be imposed on multichannel video programming distributors who compete against cable systems so that the 15% benchmark can be applied.[22] While WCA would not object to a rule requiring a wireless operator to disclose the number of subscribers it serves within a given franchised area (subject to the protective conditions discussed below), WCA would strongly object to a requirement that wireless operators reveal any proprietary information, such as the names or addresses of subscribers.

WCA's interest in preserving the proprietary nature of its members' subscriber information is grounded in the predilection of franchised cable operators to engage in predatory "rifle shot" marketing techniques targeted at subscribers to alternative services that is discussed above.[23] If a cable operator gains access to its competitors' proprietary subscriber lists, it will have a substantial advantage in the marketplace. The inevitable result will be to retard the efforts by Congress and the Commission to promote the emergence of competitive multichannel service providers.

To avoid any potential for abuse, the Commission should establish the conditions under which information can be collect from multichannel video programming distributors and thereafter used to determine whether effective competition exists. At a minimum, any rules issued by the Commission should contain the following elements:

1. Alternative service providers should be required to disclose information only to local franchise authorities and the Commission, not to franchised cable operators.

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[22]*See NPRM, supra* note 3, at n. 35.

[23]*See supra* at page 3. *See also* Comments of WCA, MM Docket No. 90-4, at 11-12 (filed April 6, 1990).

2. Requests for information should be narrowly tailored to elicit no more information than absolutely necessary for the local franchising authority or the Commission to determine whether effective competition exists (*i.e.* information going to the number of subscribers in the franchise area, but not specific information regarding any subscriber).

3. Any multichannel video programming distributor responding to a request should be reimbursed for all costs (including a reasonable charge for use of staff resources) incurred in preparing a response.

4. So that no alternative service provider is overly burdened by cable's attempts to avoid rate regulation, no alterative service provider should be subjected to more than one information request a year.

5. If requested by the multichannel video programming distributor, all information provided to a local franchising authority or the Commission pursuant to a request must treated as confidential and withheld from inspection by the franchised cable operator, the public or any governmental authority (including any court) making or reviewing any effective competition determination. To assure compliance, strict financial penalties should be imposed on any person breaching confidentiality and any franchised cable operator found to be in possession of information submitted confidentially should be deemed unfit to serve as a Commission licensee.

Provisions such as these will substantially minimize the threat that proceedings surrounding effective competition determinations will be transmogrified by the cable industry into weapons against competition.

C. The Commission Cannot Deem Each Alternative Multichannel Video Programming Distributor In A Market To Have "Comparable Video Programming" Merely Because All Alternative Distributors Together Have More Than A 15% Market Share.

The *NPRM* also seeks comment on how the Commission can appropriately determine which providers of video programming in the marketplace can properly be considered "multichannel video programming distributors" which offer "comparable video programming"

for purposes of Section 623(l).[24] In that regard, the Commission suggests that each of the multichannel video programming distributors in a given market should be deemed to have "comparable video programming" if it "offers multiple channels of video programming and the numerical tests for the offering of and subscription to competitive service under the second test are met."[25] WCA vigorously objects to that proposal for two reasons.

First, while the Commission is required under the statute to count the subscribers of all competitors except the largest in determining whether the 15% benchmark is met, it would be inconsistent with the plain language of the 1992 Cable Act to presume that each of the smaller competitors has "comparable video programming" merely because all of the smaller competitors combined have a 15% share of the market. Section 623(1)(1)(B) of the Cable Act specifically states that effective competition cannot exist unless "the franchise area is (i) served by at least two unaffiliated multichannel video programming distributors, each of which offers comparable video programming to at least 50 percent of the households in the franchise area . . . ." [26] The underscored language assures that a cable system will remain rate regulated, even if several niche video systems are operating in the marketplace with small market shares, but none has the popular video programming necessary to draw a mainstream audience and effectively compete.[27] Given Congress' well documented concern with the

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[24]*See NPRM, supra* note 3, at ¶ 9.

[25]*Id.*

[26]47 U.S.C. § 543(1)(1)(B) (*emphasis added*).

[27]For example, assume there are three operators within a market with one being the cable operator, the second being a wireless operator who has 11% of the market, despite being (continued...)

difficulties emerging competitors to cable were encountering in securing access to programming,[28] Congress had good reason to craft Section 623(l) so that no cable operator could enjoy the benefits of rate deregulation unless competitors actually had comparable video programming. Congress has determined that no multichannel video programming distributor's subscribers can be counted toward the 15% benchmark unless that particular distributor has comparable programming, and the Commission cannot rule otherwise.

Second, even were the Commission to apply its proposal only to those multichannel video programming distributors that alone have a market share greater than 15%, the result would be inconsistent with Congressional intent. The Commission's approach effectively renders the "comparable video programming" language of Section 623(l) without meaning, for it adds nothing to the 15% penetration benchmark established under the same section. The plain language of Section 623(l) makes clear that Congress intended for a more searching inquiry into the presence of "comparable video programming" than the mere assumption that it exists whenever the 15% penetration standard is met. Congress was well-aware that in reviewing the wireless success stories to date, one common thread emerges -- those wireless systems that are most successful are those few that have been able to secure fair access to

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[27](...continued)
unable to secure programming comparable to the cable operator, and a third operator who services 5% of the market and carries three or four Spanish programming channels. Clearly the Spanish operator's programming is not comparable to the other operators' programming; therefore, the Spanish operator's percentage market share should not be counted in determining if the 15% benchmark is met.

[28]*See, e.g.* Senate Report, *supra* note 18, at 24-29.

the programming services demanded by consumers.[29] The moral is clear -- wireless cable operators must be able to provide their subscribers with a channel lineup similar to that of the cable competition. [30] Indeed, a 1988 Congressional study concluded that:

> The overwhelming majority of consumers who watch cable television have access to only one source of cable programming, The local cable operating system enjoys a virtual veto over any programming that the consumer wishes to see. . . . [T]here are alternative technologies which can provide competition to existing cable television systems. However, the survey also shows that companies using these alternative technologies have difficulty purchasing the most popular forms of programming -- HBO, Cinemax, ESPN and the like. *It is simply a reality of the marketplace that, without some of these popular sources of programming, a firm cannot compete with an established cable system.* [31]

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[29]*See, e.g.* Testimony of Robert L. Schmidt, WCA President, before the Senate Communications Subcommittee, at 4 (March 14, 1991).

[30] NTIA reached a similar conclusion in 1988, observing that "the long-term viability of [wireless cable], even as a niche business, will depend in large part on operators' ability to acquire and retain programming that will attract subscribers." Nat'l Telecommunications & Information Admin., "NTIA Telecom 2000," at 491. As *Broadcasting* succinctly reported, "[i]f wireless cable is to take its place alongside conventional cable in the pay television marketplace, it will have to be able to offer its subscribers all the popular programming services that the conventional version does." "Bob Schmidt: champion with a new cause," *Broadcasting*, at 72 (Oct. 17, 1988). *See also* Meeks, "The Wireless Wonder," *Forbes*, at 60 (Feb. 19, 1990);

[31]*See* Subcommittee on Antitrust, Committee on the Judiciary, United States Senate, *Survey on the Availability of Programming to Cable Competitors*, at 5-7 [hereinafter cited as "*Senate Survey on Cable Competition*"]. None of this should surprise the Commission. Former Chairman Sikes has acknowledged that "[r]easonable access to programming is an essential ingredient to facilities-based competition in the video services field." Statement of Alfred C. Sikes on FCC Cable Television Policies, Recommendations, and Initiatives Before the Subcommittee on Communications, Committee on Commerce, Science, and Transportation, United States Senate, at 14 (Nov. 17, 1989) [hereinafter cited as "Sikes Testimony"]. Commissioner Quello has observed that "[c]hannel capacity and programming are essential ingredients for wireless cable's ability to compete in the future video distribution marketplace." Speech by FCC Commissioner James H. Quello before the Wireless Cable Association's Fifth Annual Int'l Exposition and Conference, at 6 (del. July 28, 1992).

(continued...)

Thus, WCA believes that it would be an abuse of the Commission's discretion, and inconsistent with Congressional intent, for the Commission to presume that "comparable video programming" for purposes of Section 623(l) exists merely because one or more multichannel video programming distributors have a 15% market share.

Exactly how the Commission can determine whether comparable video programming exists will not be simple. WCA believes that each determination of comparability will have to be made on a case by case basis in light of all the relevant facts. However, there is one component which the Commission must take into consideration in determining if comparable programming exists; whether the competitor carries the programming services most demanded by subscribers. Although demand varies somewhat from region to region, there is no question but that the public demands certain programming, such as the major broadcast networks, ESPN, CNN, HBO, TNT and others, from multichannel video programming distributors.

The critical nature of certain programming services has been confirmed by no less an authority on the cable marketplace than Tele-Communications, Inc ("TCI"). At one of the

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[31](...continued)
Commissioner Duggan has voiced similar views. "Inquire Whose Son This Stripling Is . . . ," Remarks of Hon. Ervin S. Duggan before the Wireless Cable Ass'n (del. July 23, 1991). Commissioner Marshall has forthrightly noted that "[a]ccess to desirable programming at fair prices is the key to the competitive viability of . . . potential challengers to cable." "Balancing the Power of Cable," Remarks of Hon. Sherrie P. Marshall before the Fed. Communications Bar Ass'n, at 6 (del. Mar. 7, 1990). Little wonder, then, that the Commission's 1990 *Report* to Congress on the state of competition in the cable industry found that "[r]easonable access to programming is important for achieving effective competition among program distributors and fostering maximum possible public choice." *Competition, Rate Deregulation and the Commission's Policies Relating to the Provision of Cable Television Service*, 5 FCC Rcd 4962, 5031 (1990).

Commission's field hearings in MM Docket No. 89-600, TCI's representative acknowledged in his written testimony that cable operators must offer a variety of programming services in order to meet consumer demand. Indeed, TCI went so far as to confess that certain specific services were, to use TCI's terminology, "must carries" that cable systems absolutely had to carry to meet consumer demand (citing HBO, ESPN, USA and regional sports as examples).[32] The Commission can understand that if TCI needs these services to survive, any emerging competitor hoping to take on an entrenched cable operator must, too.

Therefore, WCA urges the Commission to employ a case-by-case approach, at least initially, in evaluating the comparability of programming. Obviously, an exact identity of programming should not be required since some programming is, for all intents and purposes, functionally interchangeable. However, in every market there will be certain services that an operator absolutely must have to compete and, unless those are available, no effective competition can occur.

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[32]Statement of Robert Thompson, Vice President, Government Affairs, Tele-Communications, Inc., before the FCC Los Angeles Field Hearing, MM Docket No. 89-600, at 4-5 (Feb. 12, 1990).

III. CONCLUSION

WHEREFORE, for the foregoing reasons above, WCA urges the Commission to adopt the rules and policies suggested by WCA to assure that Congress' policies concerning cable rate regulations are properly implemented, without imposing undue hardship on the emerging competitors to cable Congress was attempting to aid.

Respectfully submitted,

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